

REMARKS

Status of the Claims

Claims 1-2, 5, 7-11, 13-14, 16-18, 23-24, 26-27, 29-33, 35-36, 38-42, 44-45, 47-51, 53-54 and 55-65 are currently pending in the application. By this Amendment, claims 19 and 59 have been cancelled. Claim 1 has been amended. Support for this amendment can be found in the originally filed application, for example at page 9, paragraph 1. Claims 24, 26-27, and 29-31 have been amended to correct dependencies. No new matter has been added.

Allowable Subject Matter

Applicants thank the Examiner for indicating that claims 62 and 63 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejections Under 35 U.S.C. § 103(a)

U.S. Patent No. 5,669,938 in view of U.S. Patent No. 6,458,173

Claims 1, 2, 5, 7-11, 13, 14, 16-18, 23, 24, 26, 27, 29-33, 35, 36, 38-42, 44, 45, 47-51, 53, 54 and 56-61 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Schwab (U.S. Patent No. 5,669,938 hereinafter, "Schwab") in view of Lin (U.S. Patent No. 6,458,173 hereinafter, "Lin") for the reasons set forth at pages 2-4 of the Office Action. Applicants strongly disagree and traverse the rejection for at least the reasons below. Claim 59 has been cancelled, thereby rendering its rejection moot.

The Examiner is understood to take the position that *Schwab* teaches a fuel composition comprising a major portion of a hydrocarbon middle distillate fuel, about 1 to about 40 vol% water and an emission reducing amount of at least one fuel-soluble

organic nitrate such as 2-ethylhexyl nitrate. See page 2 of the Office Action. The Examiner has admitted that “*Schwab* differs from the claims in that he does not specifically teach the claimed sulfur content of the fuel”; however, the Examiner has relied upon *Lin* for teaching diesel fuels that contain 10 ppm or less of sulfur. See *id.* at page 3.

However, *Schwab* teaches away from the peroxide content of the presently claimed fuel compositions and methods of use thereof. For example, *Schwab* teaches that it may be preferred to “employ the organic nitrate ester component of the invention in the fuel in combination with at least one hydrocarbyl peroxide, in an amount sufficient to increase the thermal stability of the fuel over the same fuel containing the nitrate ester in the absence of the hydrocarbyl peroxide.” See col. 3, lines 58-62. Specifically, *Schwab* teaches that “the base fuel will normally contain an amount in the range of 500 to about 50,000 and preferably, from about 1,000 to about 10,000 – parts of the hydrocarbyl peroxide per million parts by weight of the base fuel (ppm).” See col. 4, lines 32-35. Therefore, the peroxide content in the fuel compositions of *Schwab* grossly exceeds the maximum peroxide content in the presently claimed fuel compositions (e.g., less than 8 ppm peroxide.)

Moreover, *Lin* fails to overcome the deficiencies in *Schwab*. *Lin* teaches the use of a poly(hydroxy-carboxylic acid)amide or –ester derivative of formula I, and fuel compositions comprising said additive. See Abstract. *Lin* is notably silent with regard to the peroxide content in its disclosed fuel composition. As such, the reference does not teach or suggest the presently claimed fuel composition and methods of use thereof, wherein the amount of peroxides in the fuel composition is less than about 8 ppm.

For at least the foregoing reasons, the combination of references fails to teach or suggest the presently claimed invention and no *prima facie* case of obviousness exists. Reconsideration and withdrawal of the rejection are respectfully requested.

U.S. Patent No. 6,447,557

Claims 1, 2, 5, 7, 8, 10, 11, 13, 14, 16, 17, 19, 23, 24, 26, 27, 29, 30, 32, 33, 35, 36, 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53, 54, 56, 57 and 59 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yeh (U.S. Patent No. 6,447,557 hereinafter, “Yeh”) for the reasons set forth at pages 4-5 of the Office Action. Applicants strongly disagree and traverse the rejection for at least the following reasons. Claims 19 and 59 have been cancelled, thereby rendering their rejections moot.

Yeh teaches an ultra-low sulfur fuel composition as described therein. See Abstract. Yet like Schwab above, Yeh fails to teach or suggest the presently claimed fuel composition and methods of use thereof. In particular, Yeh fails to teach or suggest any particular peroxide content in its disclosed fuel compositions, much less a peroxide content of less than about 8 ppm, as presently claimed. In fact, Yeh is notably silent on this point.

Accordingly, the reference fails to teach or suggest the present invention and no *prima facie* case of obviousness exists. Reconsideration and withdrawal of the rejection are respectfully requested.

U.S. Patent No. 6,080,212

Claims 1, 2, 5, 7-11, 13, 14, 16-19, 23, 24, 26, 27, 29-33, 35, 36, 38-42, 44, 45, 47-51, 53, 54, 56-61, 64 and 65 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Beimesch (U.S. Patent No. 6,080,212 hereinafter “Beimesch”)

for the reasons stated on pages 5-6 of the Office Action. Applicants strongly disagree and traverse the rejection for at least the following reasons. Claims 19 and 59 have been cancelled, thereby rendering their rejections moot.

Moreover, like *Schwab* and *Yeh* above, *Beimesch* fails to teach or suggest the presently claimed fuel composition and methods of use thereof. In particular, *Beimesch* fails to teach or suggest any particular peroxide content in its disclosed fuel compositions, much less a peroxide content of less than about 8 ppm, as presently claimed. In fact, *Beimesch* is notably silent on this point.

Accordingly, the reference fails to teach or suggest the present invention and no *prima facie* case of obviousness exists. Reconsideration and withdrawal of the rejection are respectfully requested.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims. This is believed to be a complete and proper response to the Examiner's Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 50-2961.

Respectfully submitted,

Dated: February 27, 2009

By:


Cynthia Lan Martin
Reg. No. 62,960

Carol L. Cole
Reg. No. 43,555

MH2 TECHNOLOGY LAW GROUP LLP
1951 Kidwell Drive
Suite 550
Tysons Corner, VA 22182
Phone: (703) 917-0000
Facsimile: (703) 997-4905